IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1058 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BABUBHAI N PATEL AND OTHERS.....Petitioners

Versus

HEIRS OF NATHABHAI MARGHABHAI AND OTHERS...Respondents

Appearance:

MR RM VIN for Petitioners

MR AJ PATEL for Respondent No. 2

SERVED for Respondent No. 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/02/98

ORAL JUDGEMENT

Being aggrieved by the judgment and decree dt. 28/1/1992 passed by the then learned Second Extra Assistant Judge, Kheda at Nadiad in Regular Civil Appeal No. 236 of 1983 on his file, dismissing the appeal and confirming the judgment and decree dt. 1st October, 1983 passed by the then learned Civil Judge (J.D.) at Anand in Regular Civil Suit No. 277 of 1977, directing to hand over peaceful and vacant possession of the shop let, pay the sums of rent, and fixing standard rent at the rate of Rs.85/- per month, as well as awarding the costs, the

original defendants Nos. 1,2 and 3 have preferred this revision application under Sec.29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short the "Bombay Rent Act").

2. Nathabhai Marghabhai was the owner of the house called " Sahajanand " situated on Station Road at Anand. In that building, on the ground floor, there is a shop bearing old Municipal No. 7/100 and new Municipal No. 10/2/25. That shop (hereinafter referred to as the "suit shop") was let to Babubhai Narottamdas, the present petitioner no.1 and Krushnalal Maganlal Thakkar, the deceased husband of the petitioner no.2 at the monthly rent of Rs. 125/- from 10th October, 1961. The petitioner no.1 and husband of the petitioner no.2 forming the partnership firm in the name and style "Gopal Tea Depot " were carrying on the business in the suit shop. The period of monthly tenancy commenced on 10th day of every month and ended with 9th day of the next month under Gregorian calendar. The rent was to be paid every month regularly but as it was not so paid, those two tenants were in arrears of rent from Sud 1 of Kartik S.Y.2032. Till the date of the suit, in all Rs. 2,683-50 Ps. had become due. Harivadan Nathalal, the son of Nathabhai Marghabhai was planning to have his venture in Hardware. He was, therefore, keen to have the possession of the suit shop for his bonafide requirements. It was found that as the petitioner no.1 using and occupying one block in Sardar Ganj at Anand where he was carrying on his business, was not using the suit shop. Krishnalal Maganlal, the husband of the petitioner no.2 died on 4th February, 1976. Because of his death, the partnership stood dissolved. The petitioner no.1 the sole surviving partner then unlawfully sublet the suit shop to Vinubhai Babubhai, Narsinhbhai Narottambhai and Chimanbhai Bhailalbhai. Nathabhai Marghabhai, therefore, gave a notice on 11th April, 1997, terminating the tenancy and calling upon the petitioners to hand over peaceful and vacant possession of the suit shop on four grounds namely (1) arrears of rent; (2) bonafide requirement (3) non-user; and (4) sub-letting. As no heed was paid to the notice, Nathabhai Marghabhai filed Regular Civil Suit No. 277 of 1977 in the Court of the Civil Judge (J.D.) at Anand to recover peaceful and vacant possession of the suit shop and amount of rent that had become due till then alongwith mesne-profits and costs.

3. After being served with the summons, the petitioners appeared before the trial court. The petitioners nos. 1 and 3 filed their written statement

at Ex.22 denying each and every allegation levelled against them. The learned Civil Judge (J.D.) at Anand framed necessary issues at Ex.29. Appreciating the evidence on record, he reached the conclusions that the petitioners were not the tenants in arrears of rent for more than six months. The case about bonafide requirement was not established, likewise the case about non-user was also not established, but he found that the case of subletting was established. He on that count, passed the decree of eviction on 1st October, 1982. Being aggrieved by such judgment and decree, the present petitioners preferred Regular Civil Appeal No. 236 of 1983 in the District Court, Kheda at Nadiad. The appeal was assigned to the then 2nd Extra Assistant Judge, Kheda at Nadiad for hearing and disposal in accordance with law. The learned Assistant Judge, hearing the parties, confirmed the judgment and decree passed by the trial court and dismissed the appeal with costs. It is against that judgment and decree, the present revision application is preferred.

4. Before I proceed, it may be stated that Nathabhai Marghabhai died during the pendency of the suit. His heirs & legal representatives- opponents nos. 1/1 and 1/7 were then impleaded as parties. With a view to avoid unnecessary dispute that might be raised for and on behalf of Parshottam Marghabhai, the brother of Nathabhai Marghabhai, his heirs and legal representatives were also joined as the defendants nos. 6 to 11 who are respondents nos. 4 to 9 in this revision application. Likewise, Chhaganbhai Naranbhai and Vithalbhai Naranbhai were joined as the defendants nos. 4 and 5 who are the respondents nos. 2 and 3 in this revision application. The respondent no.10 is also the heir and legal representative of the original plaintiff Nathabhai Marghabhai.

5. It may be mentioned that before the lower appellate court, the opponent nos. 1/1 to 1/7 had not filed the cross-objections against the findings of the trial court on the issues on which they failed. The appeal was confined to unlawful sub-letting alone. The parties have also before me confined to the only issue namely sub-letting.

6. Assailing the judgments and decrees passed by both the courts below, Mr. Vin, the leasrned advocate representing the petitioners, has submitted that both the courts below fell into error in appreciating the evidence in right perspective. The law applicable is either overlooked or erroneously interpreted. According to him,

the suit shop was let to the firm namely "Gopal Tea Depot" i.e. the petitioner no.3. After the death of Krishnalal Maganlal Thakkar, the firm stood dissolved and the petitioner no.1 then became the sole tenant of the suit shop. He was, therefore, free to run his business in the suit shop taking others as partners. He, taking Vinubhai Babubhai, Narsinhbhai Narottamdas and Chimanlal Bhaichandbhai as his partners formed new partnership firm called " V.Patel & Co." and continued to carry on his business. If accordingly the tenant carries on his business in the premises let to him, it would not be in law amount to subletting, but unfortunately ignoring such position of law, both the courts below fell into error by holding that the head tenant namely the petitioner no.1 had unlawfully sublet the suit shop to the above named three persons. According to him, both the courts below were not right in their opinion or impression that in case of bonafide partnership, every partner invests the amounts and has to share not only the profit but loss too; and that being not so in the present case, the partnership was nothing but a cloak to frustrate the claim of the opponents nos. 1/1 to 1/7, and that was evident from the facts that the petitioner no.1 though invested no amount, was having the share in profit and no share in loss, and that was indicative of bogus partnership. The courts below overlooked the law that without any investment, a partner can have the share in profit. In support of his contention and to show how both the courts below erred in their approach certain decisions were shown to me. In the case of HELPER GIRDHARBHAI v SAIYED MOHMAD MIRASAHEB KADRI AND OTHERS, AIR 1987 SC 1782, it is held that as per well settled law, if there is partnership firm of which tenant of the premises in which the business of the firm is carried on, is a partner, the fact of carrying on of business of the partnership in the premises would not amount to subletting leading to the forfeiture of the tenancy. It is further held that important elements, while appreciating rival contentions, must be born in mind so as to know whether there is a partnership. As made clear in that decision, the important elements are-

(i) There must be an agreement entered into by all the parties concerned;

(ii) the agreement must be to share profit of business; and

(iii) the business must be carried on by all or any of the persons concerned acting for all.

It is also held that if the partner brings in as his assets, the tenancy in the premises in which the partnership business is to be carried on, the fact that the partner in question is to share the profit only and is to get a fixed percentage of the profits, or further the fact that the said partner is not to operate the bank accounts, there being nothing instrisically wrong in law from constituting a partnership, in the manner, it is done, it could not be said, that no genuine partnership had come into existence. On the basis of this decision, Mr. Vin, the learned advocate for the petitioner emphatically submitted that if in the present case, the petitioner no.1 was to get the fixed percentage of profit, that fact alone would not render the genuine partnership a camouflage. As per the partnership agreement produced at Ex.116, the petitioner had to share the profit of the business which is 15% or Rs.5500/- minimum, regardless of loss or profit. The business was carried on by the petitioner no.1 for & on behalf of all other partners. It is thereby also clear that he was acting for all. Both the lower courts, therefore, ought to have held that everything being in consonance with requirements of law, the partnership was not camouflage but genuine and there was, in fact, no subletting. Another decision to which my attention was drawn is rendered in the case of RAGHUNANDAN NANU KOTHARE versus HORMASJI BEZONJI BAMJI, A.I.R. 1927, Bombay 187 , wherein it is held that it is not essential to constitute a partnership that the parters should agree to share the loss. It is perfectly open to the partner to say that as between himself and other partners, he would be sharing the profits, and others would profit or loss or both. In the matter of sharing the profits, partners can agree to share profits in any way they like. They may agree to share equally. They may also agree that one partner is to receive a fixed annual or monthly sum in lieu of a sum varying in accordance with profits actually earned. In this case, as per the agreement Ex.116, the petitioner has preferred to have his share in profits without any liability to bear the loss, which was in view of such law open to the petitioner not to agree to share loss but both the courts below overlooked such law made clear by the aforesaid decisions and fell into error. This court had the occasion to deal with such question in the case of MEHTA JAGJIVAN VANECHAND Vs. DOSHI VANECHAND HARAKHCHAND AND OTHERS, AIR 1972 Gujarat 6, wherein making the law clear, it is held that if the tenant enters into the partnership and allows the premises being used for the benefit of the partnership, it does not constitute assignment or subletting in favour of the

partnership firm entitling a landlord to recover possession, because unless the individuality of the assignor and the assignee is different and distinct, it does not constitute assignment. Taking in of a partner does not amount to assignment as a partnership has no distinct personality. Moreover, tenancy interest cannot be split up into parts and, therefore, a tenant cannot assign the tenancy interest to a partnership of which he himself is a partner. In this case, this court also referred the decision of the Madras High Court in the case of GUNDALPALLI RANGAMANNAR CHETTY vs. DESU RANGIAH AND OTHERS, AIR 1954 MADRAS 182 and accepted the view taken therein. What is held by the Madras High Court is that there cannot be subletting, unless the lessee parted with legal possession. The mere fact that another is allowed to use the premises, while the lessee retains the legal possession, is not enough to create a sub-lease. To create a lease or sub-lease a right to exclusive possession and enjoyment of the property should be conferred on another. In the case on hand, it cannot be said that the petitioner no.1 parted with the possession and put the above three partners to exclusive possession and enjoyment of the property which is one of the essence for constituting subletting. But both the courts below failed to take a note of such law, and adopting the erroneous approach, reached the conclusion not in consonance with such principles of law. Lastly, my attention to the decision in the case of MOHD. HAFEER KHAN Vs. STATE TRANSPORT APPELLATE TRIBUNAL, GWALIOR AND OTHERS, AIR 1978 MADHYA PRADESH 116 was drawn so as to impress upon the general nature and assignment of partnership. In that case, what is held is that the partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners, while in the case of a company, it stands as a separate juristic entity distinct from its share-holders. It is further held that a partnership contains three elements, viz. an agreement entered into by all the persons concerned; the agreement must be to share the profits of a business; and the business must be carried on by all or any of the persons concerned acting for all. The last element shows that the persons of the group who conduct the business do so as agents for all the persons in the group and are therefore liable to account to all. Pointing out this decision, what is sought to be canvassed by Mr. Vin, the learned advocate for the petitioners is that according to the Partnership Act, the partnership is not a legal entity and hence when a firm is a tenant, the partners of such firm are tenants in their individual capacity. No doubt, Order XXX C.P.Code

permits a partnership firm to sue or be sued in the firm name as if it is a corporate body, the legal fiction must not be carried too far and it is for some purposes that the law has extended a limited personality to a firm which is not a legal entity. The persons who are individually called partners are collectively called a firm and the name under which their business is carried on is called the firm name. When the partnership business is carried on by one of the partners in the premises let with the help of other partners, it would not, therefore, be a subletting as envisaged by Sec.13(1)(e) of the Bombay Rent Act. It seems, Mr. Vin has based his such concluding portion of his arguments on the decision of the Supreme Court in the case of HER HIGHNESS MAHARANI MANDAISA DEVI v M.RAMNARAIN PRIVATE LTD. 68 B.L.R. 31. In view of such law, in short Mr. Vin, the learned advocate wanted to impress upon the fact that after the death of Krishnalal Maganlal Thakkar, one of the two partners of " Gopal Tea Depot " died, the petitioner no.1 being the sole surviving partner, became the sole tenant of the suit shop, and thereafter, he entered into the partnership with abovenamed three persons which came to be known as " V. Patel & Co." and started to carry on his business in the suit shop which would never amount to subletting, consequently erroneous findings of both the courts below on this point are required to be set aside.

7. Mr.A.J.Patel, the learned advocate representing the opponents in reply submitted that both the lower courts below have rightly passed the decree. There is no reason to interfere with the same. The case advanced in defence is not genuine as sought to be canvassed. Both the courts below have with meticulous care & finicky details examined the evidence and rightly unearth the tricks and device or strategy adopted by the petitioner no.1 so as to frustrate the claim of the landlord and get out from the clutches of the Bombay Rent Act. He then cited certain decisions to substantiate his contentions.

8. In the case of ASSOCIATED HOTESL OF INDIA LTD. Vs. S.B. SARDAR RANJIT SINGH, AIR 1968 SC 933, it is held that the landlord has to discharge the burden, if he comes out with the case of subletting. If the landlord, by leading evidence, shows that the person other then the tenant was in exclusive possession for valuable consideration and the tenant does not choose to rebut such evidence led, proper inference of subletting can well be drawn. In another case of K. ACHUTA BHAT vs. VEERAMANENI MANGA DEVI AND ANOTHER, AIR 1989 SC 93, what happened was that the tenant had handed over the furniture, utensils etc., to the transferee and received

certain sum as security and he was entitled to reimburse himself for any loss or damage caused to the furniture and the utensils. Though the agreement stated that the tenant will continue to be the lessee of the property, it was obvious that the rent of Rs.250/- per month was really to be paid by the transferee through the transferor tenant. There was a specific provision that in the event of the landlord enhancing the rent, the transferee should pay the difference between the present rent and the enhanced rent along with the monthly amounts payable as per the agreement. The agreement conferred proprietary rights on the transferee to appoint the staff as well as terminate their services. He was also authorised to take disciplinary action against the staff. He was empowered to run the business on his own accounts and all taxes, fees and rates were to be paid by transferee himself. He had also to bear the costs of carrying out necessary repairs. The transferee was also to be assessed to Income Tax as well as taxes in his own name as a proprietor of the hotel and not as Manager of the hotel. He was not bound to render the accounts to the tenant or share with him the profits and losses of the business. He became solely responsible to bear all the expenses and pay all the taxes, public charges etc. On such terms and facts on record, it was held that it was a clear case of subletting and not the tenant taking others as partners to run his business and the tenant was, therefore, liable to be evicted on that count. The Supreme Court in that case also observed that the tenant and his transferee had used all the ingenuity at their command to camouflage the real nature of the transaction and make it appear that there was only a transfer for the managing rights of the business and not a transfer of the business in toto together with the right to occupy the leased premises. The Division Bench of this court in the case of SHAH CHATRABHUJ NARSHI AND ANR vs. NENSIBHAI SHAVANJIBHAI GOHIL & ANR, 21 G.L.R. 377, held that

" The real crux of the problem under sec.13(1)(e) of the Rent Act, is whether the tenancy rights are thrown into partnership assets or for that matter any interest is created therein in favour of the incoming partners. The question has to be decided in accordance with the Transfer of Property Act and the Bombay Rent act and not according to the law prevalent in England since there are special conditions attached to the land tenure in England.

In view of the provisions contained in sec. 5 of the Transfer of Property Act, since

transfer of property includes a transfer of one or more of the subordinate interests or rights, which can be affected by conveying it in present or in future to one or more living persons or to himself and one or more living person, it would not be right to content that there cannot be any assignment of the whole or lesser interest by way of assignment or sub-lease in favour of himself and other living persons.

The real question, therefore, is whether the tenancy rights have been thrown into the partnership assets or for that matter any interest is created in tenancy rights in favour of the incoming partners for purposes of determining whether sec. 13(1)(e) of the Rent Act is attracted or not. "

9. Lastly Mr. Patel, the learned advocate referred the decision of Allahabad High Court in the case of HAJI ABDUL SHAKOOR v. THE RENT CONTROL AND EVICTION OFFICER, KANPUR AND OTHERS, 1959 Allahabad, 440 wherein, it is held as under :-

" If a transaction is genuine and intended to be acted upon, it cannot be assailed on the ground that the motive of the parties was to avoid a particular status. Secondly, on the other hand, if it is "sham " transaction never intended to be acted upon but only a legal mask for quite another sort of transaction, the court will tear off the mask to see the real face of the transaction; and the fact that the mask is legally perfect in itself, will not save it from being torn off and discarded. The border line between motive and intention may be thin and hard to distinguish- every boarder is troublesome for those who have to guard it-but the question whether a particular transaction is genuine or "sham" is one of fact and the decision must depend upon the circumstances of each case.

If a deed of partnership contains clauses which are inconsistent with and contradict one another and the intention of the parties is under suspicion, the intention as to their real relation has to be ascertained by all the relevant facts taken together."

10. On the basis of these decisions, what is sought to be canvassed is that in this case, the alleged partnership is camouflage, and therefore, the courts

below were right in tearing off the mask so as to find out the real nature of the transactions and thereby rightly unearthed actual or true transaction. The tenancy rights of the petitioner no.1 were amalgamated into the partnership and so the new firm named V. Patel & Co. was constituted under the partnership deed (Ex.116). Such circumstances clearly lead to the only conclusion, that there is complete assignment of the possessory right of the business premises along with a right to run the business separately by the so called partners, and therefore, in this case, Sec.13(1)(e) of the Bombay Rent Act is attracted making all the defendants liable to hand over the possession to the landlord.

11. In view of such rival contentions of the parties, the question that arises for consideration is whether the alleged partnership which the tenant has created taking above stated three persons as the partners, is real, genuine and bonafide, or the said partnership is camouflage one so as to avoid operation of Sec. 13(1)(e) of the Bombay Rent Act which prohibits the tenant from subletting the rented premises, or assigning or transferring in any other manner his interest in whole or part of the premises.

12. For establishing the subletting, two ingredients are required to be satisfied namely; (1) exclusive possession; and (2) valuable consideration. If any of the two ingredients are lacking, the landlord cannot succeed. When the landlord claims the possession of the premises let to the tenant on the ground of subletting, initial burden of proving unlawful subletting or assignment lies on him. Once the landlord shows that the third person i.e. a stranger to the contract of tenancy is in occupation, and that the tenant himself is not in occupation of the premises, the burden of proving nature of occupancy of the third person, shifts to the tenant for the landlord is not expected to know the agreement, or agreed terms between his tenant and the occupant. He can intrinsically say from the conduct of the parties, or on the basis of exclusive possession, or independent business, payment of charges, for use and occupation etc. The tenant having personal knowledge when fails to discharge his burden by leading proper and satisfactory evidence, the court may be justified in drawing the inference against him.

13. Admittedly, formally the suit shop was let to Gopal Tea Depot, the firm of which the petitioner no.1 was one of the two partners, and after the death of

Krushnalal Maganlal Thakkar, his partner, he being sole surviving partner, became the sole tenant and acquired every tenancy right and interest in the suit shop. Sometimes thereafter, he entered into the partnership with the above named three partners and started to run the business in the name and style " V.Patel & Co.".

14. Over and above the decisions cited, few more decisions for just consideration of the rival cases may be referred to. The Delhi High Court in the case of KANAHIYA LAL BALKISHAN DAS vs. LABHU RAM, AIR 1971 DELHI 219, has held that subletting essentially entails induction of a third person into the lease premises. But when a firm becomes a tenant, its partners also become tenants since a firm is only a compendious name of the partners. As such when the premises are allotted to one of the partners on the dissolution of the firm, there will be no subletting. The Supreme Court, in the case of MURLI DHAR vs. CHUNI LAL AND OTHERS, 1970 RENT CONTROL JOURNAL 922, has held that there is no substance in the contention that the occupation of the shop by the new firm was occupation by the legal entity other than the original tenant and such occupation proved subletting. A firm unless expressly provided for the purpose of any statute, is not a legal entity. The firm name is only a compendious way of describing the partners of the firm. Therefore, occupation by a firm is only the occupation by its partners. Where the old and new firms have a common partner, the occupation will be by one of the original tenants. The common partner will be considered to be in possession all throughout in his individual capacity. It is impossible to treat him as possessing one legal personality as member of one firm and another such personality as member of another firm.

15. From all the above referred decisions, what is made clear is that if the tenant starts the business in partnership in the premises let to him, it would not amount to unlawful subletting or assignment, but if the landlord comes forward with the case of subletting, alleging that the partnership created, is a device to conceal subletting, the court has to, in order to remove the vigor, try to unearth the reality and find out what real nature of the transaction is? In short, so far as the partnership is bonafide and genuine, there would be no subletting, but if it is camouflage, certainly, it would amount to subletting. In this case, the above named three partners with whom the alleged partnership is created, are in possession, and to know the real nature of the transaction vide Ex.116, endeavour of the court should be to find out whether a tenant has walked out

leaving the premises to others who carry on the business under sham and camouflage partnership, or whether taking certain persons as partners, the tenant has under the guise of partnership given them exclusive possession of the premises, or part of the premises, or whether he retained control over the business and premises, or left the same in the hands of the partners, or whether he threw and amalgamated his tenancy rights of such premises in the partnership estates of the new firm ? If answer to any of the above questions is found in the affirmative, certainly it would amount to unlawful subletting or unlawful assignment.

16. Of course, a plain reading of the partnership deed Ex.116 shows that there may not be any reason to doubt about genuineness and bonafides of the partnership created by the petitioner no.1 in the name and style V.Patel & Co., but when that document is considered alongwith evidence on record, the real nature that emerges, is that the partnership in this case is camouflage. Harivadan N. Patel, the son of the original landlord, has deposed at Ex.82. While the petitioner has deposed at Ex.102. Other witnesses, are no doubt examined, but their evidence is not relevant to the point in question. It may be mentioned that the evidence of Kanubhai Parshottamdas recorded at Ex.110 is to be read along with the evidence of both the parties. It may be stated at this stage that Kanubhai Parshottamdas was once serving as the Munim (clerk) in V.Patel & Co. He was writing the books of accounts and that too under the instructions of the petitioner no.1. From the evidence of the petitioner no.1, what transpires is that he has invested not even a paise in new partnership firm. Still however, he has been conferred right to have a share in profits and no liability in case the partnership runs in loss. Of course, as made clear above, in the case of Raghunandan Nanu Kothare (supra), how the partners should agree about the share in profit and loss is a matter solely within the discretion of those partners, and it would be open to agree by the partners that one of them or few of them would have a share in profits and not in loss, but when the question of assignment of tenancy or subletting is to be considered, this aspect may in some cases carry weight, when considered alongwith other circumstances on record. Though the petitioner no.1 has invested no amount, he is granted a share to the extent of 15% in the profit, but in any case not less than Rs.5,500/-. Other circumstances may now be seen and considered. What becomes clear from the evidence of Kanubhai Parshottamdas, the Munim, cannot be lost sight of. According to him, from the partnership funds, amount

of rent was paid to the petitioner and the amounts so paid, were by equally dividing the same, deducted in the accounts of the above stated three persons and no amount of rent was debited in the name of the petitioner no.1. The rent of Rs.1,000/- as submitted before me, was accordingly paid to the petitioner no.1 every month. If the tenant taking others as partners runs the business with all his bonafides, he would be paying the rent to the landlord and the same would not be paid from the partnership funds or from the funds of other partners. Here in this case, when that is not done, on the contrary, the petitioner no.1 used to collect the rent from other partners and even contributing nothing from his fund he used to make the payment of rent to the landlord, is the strongest circumstance on record going to discredit the truth of the case advanced by the petitioner in defence.

17. In Sardarganj area of Anand town, there is the shop belonging to Gokalbhai Shyambhai and that shop is used and occupied by the petitioner no.1, wherein he carries on the business. Harivadan N. Patel had, according to him, gone to the suit shop and found some one else sitting on the tilt and a Board of "Sadguru Kirana Stores" was displayed on the conspicuous part of the suit shop which was lateron removed. Such evidence shows that the petitioner no.1 has walked out of the suit shop under the guise of the partnership leaving the premises in the sole control of the above stated three partners. He thus put those three persons into the exclusive possession of the suit shop. It is pertinent to note that neither of the partners is examined by the petitioners, in order to show that the partnership is bonafide and genuine and not camouflage. The mode of payment which is made clear by the Munim is also not explained. Hence the cumulative effect of all these circumstances on record is that the petitioner no.1 put above named three persons in exclusive possession of the premises, and also leaving sole control of the business with those persons, he walked out of the suit shop. He then used to collect the rent or consideration under the guise of profit from those three persons; and that amounts to subletting with valuable consideration. Both the courts below were, therefore, perfectly right in holding that the partnership created is camouflage. In fact, under the guise of partnership, the petitioner no.1 in my view, unlawfully sublet the suit shop for valuable consideration. The landlords namely the respondent nos. 1/1 to 1/7 are, therefore, entitled to vacant and peaceful possession of the suit shop. The decree passed by the trial court and confirmed by the appellate court

is quite just and proper and being legal in all respects, is required to be maintained. This revision application being devoid of merits, is liable to be dismissed with costs.

18. For the aforesaid reasons, this revision application fails and is hereby dismissed with costs.

19. At this stage, Mr. Vin, the learned advocate representing the petitioners requests to grant some time to hand over peaceful and vacant possession to the respondent nos. 1/1 to 1/7. He submits that he would satisfy the decree, if 6 months is granted to vacate the suit shop and assured that the petitioners would not raise any dispute and frustrate the decree. Mr.A.J.Patel, the learned advocate representing the respondent nos. 1/1 to 1/7 has no objection, if the period of 6 months is granted. In view of such submissions of both, the period of six months from today is granted to the petitioners to hand over peaceful and vacant possession of the suit shop to the respondent nos. 1/1 to 1/7 on their furnishing usual undertaking within a period of four weeks from today before this court. On behalf of minor petitioners, their guardian shall furnish the undertaking. If the undertaking is not filed within the period of four weeks from today before this court, six months period granted to vacate the suit shop shall be deemed to have been withdrawn and it would then be open to the respondent nos. 1/1 to 1/7 to execute the decree immediately to get the possession of the suit shop.

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